IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

**THE HON'BLE MR JUSTICE A.GOPAL REDDY**
**and**
**THE HON'BLE MR JUSTICE P.SWAROOP REDDY**

**WRIT PETITION NO : 20055 of 2007**

**DATE:14.11.2007**

Between:

D. Sreenivasa Rao

**..... PETITIONER**

AND

1. The Collector & District Magistrate, East Godavari District, Kakinada, and others.

**.....RESPONDENTS**

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**ORAL ORDER:** (per Hon'ble Sri Justice A. Gopal Reddy)

The petitioner challenged the detention of his son-in-law, namely, Marisetty Satyanarayana S/o. Satyam, vide order dated 26.06.2007, passed by the Collector and District Magistrate, East Godavari District, Kakinada, under

Section 3(2) r/w Section 3(1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'Act 1 of 1986').

Prior to his detention, the alleged detenu was arrested in the following cases booked by the Prohibition and Excise Officials.

1. Cr.No.74/04-05 dated 18.05.2004 of Prohibition and Excise Station, Korukonda, involving 10 lts of I.D. Liquor.
2. Cr.No.277/04-05 dated 11.8.2004 of Prohibition & Excise Station, Korukonda, involving 5 lts of I.D. Liquor.
3. Cr.No.431/04-05 dated 27.10.2004 of Prohibition & Excise Station, Korukonda involving 10 lts of I.D. Liquor.
4. Cr.No.598/04-05 dated 10.01.2005 of Prohibition & Excise Station, Korukonda involving one litre of I.D. Liquor.
5. Cr.No.434/06-07 dated 20.11.2006 of Prohibition & Excise Station, Korukonda involving 20 lts. of I.D. Liquor.

In all the above cases the liquor involved is illicitly distilled liquor containing highly poisonous denaturants like Methanol and Benzene, which are injurious to health and unfit for human consumption. As per the chemical analysis report the contraband seized from the detenu is illicitly distilled liquor and produced through crude methods containing higher alcohols like Amyl Alcohol, Butyl Alcohol, Prophyl Alcohol, Acids Aldehydes, Furfural and other

unknown impurities, which is injurious to health and unfit for human consumption, and the same will drastically effect the central nervous system causing more intoxication resulting deterioration of health of consumers.

As the alleged detenu was continuously involving in the bootlegging activities, i.e., manufacture, possession, transportation of spurious liquor, the Collector and District Magistrate in exercise of the powers vested in him under sub-section (2) of Section 3 read with Section 3(1) of the Act 1 of 1986 read with G.O.RT.No.3253, General Administration (Law & Order-II) Department, dated 11.06.2007, passed the impugned order for detention of the alleged detenu from the date of service of the said order on him to prevent him further acting in any manner prejudicial to the maintenance of public order effecting public health and peace in the locality in and around Rajanagaram Village where agricultural labour predominantly resides.

Pursuant to the order of detention, the alleged detenu was taken into custody on 26.06.2007 and lodged at Central Prison, Rajahmundry, East Godavari District. At the time of taking him into custody the alleged detenu was served with the detention order along with grounds of detention and other material relied upon, which was acknowledged by him. The alleged detenu was duly informed that he has a right to make representation to the Detaining Authority, Chief Secretary to Government and Advisory Board. The Government in G.O.Rt.No.3870, General Administration (Law & Order-II) Department, dated 4.07.2007 approved the order of detention. The order of detention passed against the alleged detenu was placed before the Advisory Board in its meeting held on 26.07.2007. The Advisory Board after hearing the alleged detenu and considering the material, opined that there was sufficient cause for detention of the detenu, namely, Marisetty Satyanarayana, S/o.Satyam. Basing on

the recommendations of the Advisory Board, the Government issued G.O.Rt.No.4398, General Administration (L & O-II) Department, dated 31.07.2007 confirmed the order of detention passed against the detenu for a period of 12 months from the date of his detention i.e., 26.06.2007.

Learned counsel for the petitioner contended that in all the five cases referred to above, the Crime numbers mentioned at serial Nos.1 to 3 are of the year 2004 are stale and not proximate. The Crime numbers mentioned at serial Nos.4 and 5, where one litre and 20 litres were found in possession of the alleged detenu, are of the years January 2005 and November 2006, which are not in proximity to each other. He also contended that the detenu was not involved in manufacturing of liquor, but he was only found in possession of illicitly distilled liquor. Hence the detention order passed on the ground that the detenu is a bootlegger without any allegation that he is manufacturing the liquor, cannot be sustainable. If the detenu is released on bail, it is always open for the authorities to seek cancellation of bail, but without resorting to the same he cannot be detained. Since he is not a bootlegger, he cannot be detained by invoking the provisions of the Act.

By placing reliance upon a judgment of this Court in **Boya Thayamma v. Government of A.P.**[1], the learned counsel contends that unless the grounds of detention specifically advert to the fact that the percentage of fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the Detaining Authority to order detention under Section 3 of the Act without there being any evidence about the manufacturing of I.D. liquor.

The learned counsel also relied on a judgment reported in **C. Venkateswara Rao v. Collector and District Magistrate, Krishna**

**District, Machilipatnam**[2] wherein this Court held that mere mentioning that it is injurious to health would not meet the requirement of law resorting to preventive detention and the possession of small quantity of liquor would not create a ground for feeling of insecurity among the general public or any section thereof or grave or widespread danger to life or public health.

To substantiate that first three crimes have become stale, he placed reliance on the judgment reported in **Shaik Bashu v. Collector and District Magistrate, Ananthapur District**[3].

On the other hand, learned Advocate General contends that the detenu is a habitual bootlegger of transporting and distributing illicitly distilled liquor and even if the other three crimes, which are of the year 2004, are proximate to each other, the last incident is not proximate to the other crimes. It is only to show that the detenu is continuing to indulge in illegal activities, which requires to be prevented. When the crime numbers at Serial Nos.4 and 5 are in proximity to each other, and the earlier incidents cannot be treated as stale, the detention order cannot be set aside. In support of his contention reliance is placed on a judgment of the Supreme Court in **Collector & District Magistrate, Eluru v Sangala Knodamma**[4]

The counter affidavit filed by the first respondent clearly goes to show that the petitioner involved in five crimes where he was found in possession of illicitly distilled liquor ranges from 10 litres to 20 litres and after the samples were drawn, the same were sent to chemical analysis, and the chemical analyst opined that the contraband seized from the detenu was illicitly distilled liquor and the same was containing higher alcohols like Amyl Alcohol, Butyl Alcohol, Prophyl Alcohol, Acids Aldehydes, Furfural and other unknown impurities, which is injurious to health and unfit for human consumption. The counter also reveals that they have followed the

statutory mandate by supplying the material. After the detention order has been passed the matter has been placed before the Advisory Board. The Advisory Board after hearing the detenu gave its opinion, based on which, the Government passed an order of detention detaining the detenu for a period of 12 months to prevent him from further indulging in bootlegging activities in future.

In the light of the above submissions and pleadings as referred to above, the point that arise for consideration is whether the detention order passed by the Detaining Authority as approved by the Government in G.O.Rt.No.3870, dated 04.07.2007 and confirmed in G.O.Rt.No.4398, dated 31.07.2007 can be sustained or not?

Before dealing with the rival submissions, it would be appropriate to notice relevant statutory provisions, which deal with the purpose and intention of Act 1 of 1986.

Sub Section (1) of Section 3 of the Act 1 of 1986 empowers the Government to make orders for detaining certain persons with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. Preventive detention is an anticipatory measure and does not relate to an offence, while criminal proceedings are to punish a person for an offence committed by him under the Indian Penal Code.

Sub-section (2) of Section 3 allows the detention of a person only if the appropriate Detaining Authority with whom the powers are delegated under sub-section (2) of Section 3 is satisfied with a view to prevent such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such person. The satisfaction of the Detaining Authority is not a subjective one based on his beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data.

Sub-Section (2) of Section 3 deals with delegation of powers by the State Government and provides that if the State Government is satisfied having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1).

Sub-section (3) of Section 3 reads as under:

> When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless in the meantime, it has been approved by the State Government.

Section 2(b) defines “bootlegger”, which reads as follows:

> “2. (b) ‘bootlegger’ means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968, and the rules, notifications and orders made thereunder or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the abovementioned things by himself or through any other person, or who abets in any other manner the doing of any such thing.

Section 2(a) of the Act defines the meaning of the expression

"acting in any manner prejudicial to the maintenance of public order" which reads as follows.

> (a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, dacoit, a goonda, an immoral traffic offender or a land grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order".

Explanation to Section 2(a) of the Act reads asunder.

> "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

The grounds of detention supplied along with the detention order disclose arrest of the detenu in Cr.No.434/06-07, dated 20.11.2006 where he was found in possession of illicitly distilled liquor, and the sample sent to the Government Chemical Examiner found to be unfit for human consumption. He also involved in Crime No.598/04-05 in which he was found in possession of one litre illicitly distilled liquor, which, as per the Chemical Examiner report, was unfit for human consumption, and was not within the proximity. However, the other three crimes were registered within the proximity of each other.

According to the learned counsel for the petitioner, three cases referred to in the grounds of detention, namely, Cr.No.74/04-05 dated 18.5.2004, Cr.No.277/04-05 dated 11.08.2004 and Cr.No.431/04-05 dated 27.10.2004 are not within the proximity of

Cr.No.434/06-07 dated 20.11.2006, and chemical analyst reports of earlier crimes have not been taken into consideration, therefore detention order vitiates for non-application of mind. For the said proposition, he placed reliance on the judgment of the Supreme Court in **Asha Devi v. K. Shivraj**[5] which arose out of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, wherein it was held that the subjective satisfaction requisite on the part of the Detaining Authority, the formation of which is a condition precedent to the passing of detention order, will get vitiated if material or vital facts, which would influence the mind of the Detaining Authority, one way or the other are ignored or not considered by the Detaining Authority before issuing the detention order.

In the above case three facts were not communicated to or placed before the detaining authority before it passed the impugned order against the detenu. In those circumstances, the detention order was set aside as vitiated holding that there was non-application of mind to the most material and vital facts. The facts in the said case are not relevant to the facts in the present case.

In **Dwarika Prasad v. State of Bihar**[6], the detention order was made under Maintenance of Internal Security Act, 1971. In the said case, detention order was passed on five grounds and Ground No.5 was found to be wholly misconceived, and unfounded. In those circumstances, the Apex Court held that even if one of the grounds or reasons, which led to the subjective satisfaction of the Detaining Authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and it would not avail the Detaining Authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity, because it can never be predicted to what extent the bad grounds or reasons operated on the

mind of the Detaining Authority or whether the detention order would have been made at all if the bad grounds or reasons were excluded and the good grounds or reasons alone were before the Detaining Authority. After referring to the various earlier judgments of it, the Apex Court further held that the conclusion is therefore, inescapable that since ground No.5 was wholly misconceived, non-existent and not available under the law, the order of detention must be held to be invalid.

In **Doddi Sharada v. Collector and District Magistrate Hyderabad**[7] this Court after considering the various decisions and provisions of Act 1 of 1986, answered the reference as under.

> "In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of explanation to Section 2 (a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health." (para 29)

In **Collector & District Magistrate, Eluru**, (4 supra) the facts are that this Court set-aside the detention order passed by the

District Collector made under Section 3(1)(2) r/w Section 2(a) and (b) of the Act 1 of 1986, which was approved by the State Government and confirmed the detention of the detenu for a period of 12 months from the date of detention i.e., from 15.01.2003 by the Advisory Board holding that two of the grounds of detention out of five were stale grounds and since the said two stale grounds could not be separated from the other grounds, the satisfaction of the Detaining Authority got vitiated, therefore, the order of detention cannot be sustained. On further appeal, the Supreme Court while upholding the validity of detention order and setting aside the order of the High Court held that it is not necessary for the detenu to be re-arrested to serve out the rest of the period of detention as he was taken into custody on 15.01.2003 and was released from detention pursuant to the order of the High Court on 28.04.2003. While upholding the detention order, the Supreme Court observed as under.

> "..... if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside. In the instant case, it is seen that between the period from 10.01.2001 and 25.10.2002 the detenu was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating the two incidents of 17.01.2000 and 10.01.2001 as stale by taking them in isolation. In our opinion, the court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenu continuing to indulge in the illegal activities which requires his preventive detention. In the present case, as noticed above, the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenu. In such a fact situation, we think

> the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention, and the order of detention was based on stale grounds. While it can be stated that the incidents of 17.01.2000 and 10.01.2001 could not by themselves have been sufficient grounds to detain the detenu but would certainly become a relevant material along with other three grounds dated 3.02.2002, 6.10.2002 and 25.10.2002 to come to the conclusion that there is a need for detaining the detenu to prevent him from indulging in similar activities in the future."

In view of the same, the previous judgment of this Court in **S. Jayamma v. Collector and District Magistrate, Cuddapah**[8] holding that even if one stale and not proximity ground is taken into consideration in arriving at the subjective satisfaction, the detention order in its entirety becomes unsustainable, will be applicable to the facts of the said case alone and each case has to be considered on its own merits with regard to proximity of crime, whether it has become stale or not in the light of the law declared by the Apex Court in **Collector & District Magistrate, Eluru**,
(4 supra), wherein the Apex Court has not agreed with the reasoning adopted by this Court in the above case.

In **R. Kalavathi v. State of Tamilnadu**[9] the husband of the appellant was detained under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982, which is *pari materia* to Act 1 of 1986. While considering the meaning of word "habitually" the Supreme Court held as under.

> The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The Word "habitually" does not refer to the frequency of the occasions but to the invariability of a

> practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word " habitually" means "usually" and "generally". Almost similar meaning is assigned to the word "habit" in Aiyar's Judicial Dictionary, 10th Edn., at p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta (1995) 3 SCC 237) (para 12).
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> The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See Ayub v. S.N. Sinha (1990) 4 SCC 552) (para 13).

The Supreme Court in **Harpreet Kaur v. State of Maharashtra**[10] while considering the identical provision of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 held that "Public Order" or "Law and Order" are two different and distinct concepts and there is abundance of authority of this Court drawing a clear distinction between the two, with a view to determining the validity or otherwise of the order of detention, it would be necessary to notice the difference between the two concepts. After referring to the various judgments rendered by it, the Supreme Court held as under.

> "The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly

> causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or a wide-spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.

In the light of the law laid down in the aforementioned judgments, if we consider the grounds of detention an irresistible conclusion can be drawn that the detenu was habituated in commission of crimes and is accustomed to commit crimes of manufacturing, transporting and selling of illicitly distilled liquor, which contains injurious substances and unfit for human consumption. Once the detenu is indulging in bootlegging activities of purchase, manufacture, transport, sale and distribution of illegally manufactured spurious liquor violating the provisions of the Excise Act, which are causing widespread danger to public health and creating a feeling of insecurity among the general public, and if the same is allowed, there is every possibility of danger to the life of public health who consumes illicit liquor, which is a prejudicial activity causing danger to public health and maintenance of public order. The Detaining Authority satisfied that the activities, which were carried on by the detenu, would cause prejudice to the public health, and passed the detention order, and the same has been approved by the Government. When the matter is placed before the Advisory Board, the Advisory Board after providing an opportunity to the detenu, opined that there is sufficient cause for the detention of the alleged detenu Marisetty Satyanarayana S/o. Satyam and the same had been accepted by the Government only to prevent the detenu from perpetuating the distribution of illicitly distilled liquor. In view of

the same, the detention order passed by the Collector and District Magistrate, as affirmed by the Government in G.O.Rt.No.3870 dated 4.07.2007 does not suffer from any illegality warranting interference of this Court.

Accordingly, the Writ Petition is dismissed at the admission stage.

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**(A. GOPAL REDDY, J.)**

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**(P. SWAROOP REDDY, J.)**

14th November, 2007
Js.

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[1] 2006 (1) ALD (crl.) 473 (AP)
[2] 2004 (6() ALD 816 (DB)
[3] 2003 (1) ALD (Crl.) 1008 (AP)
[4] (2005) 3 SCC 666 :: AIR 2005 SC 1165 :: 2005 AIR SCW 159
[5] AIR 1979 SC 447
[6] AIR 1975 SC 134
[7] 2005 (2) ALT 244 :: 2005 Crl.L.J. 1916
[8] 2004 (3) ALT 642 (FB)
[9] (2006) 6 SCC 14
[10] AIR 1992 SC 979 ;; (1992) 2 SCC 177